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THE WIFE'S RIGHT OF ACTION FOR LOSS OF CONSORTIUM.—The interest of the wife in her relations with the husband falls naturally into two classes,—substantial and personal. The first is the right of support for her physical welfare; the second the right to his society, companionship, and affections.[1] At common law the wife had no effective way of enforcing either class, because of her inability to sue in her own name and to own separate property.[2] As a consequence the law grew up one-sided, protecting the husband's marital interests only.[3] How far the wife has been emancipated from the inferior position in which the common law placed her is not yet clear. Under universal married women's acts [4] a wife is allowed to sue for alienation of her husband's affections,[5] and for criminal conversation.[6] By special enabling statutes she may sue for loss of support in cases of intoxication of the husband.[7] Two recent cases are interesting as marking the present limits of a wife's right to recover for loss of *consortium*. In one it was held that an action for loss of *consortium* would lie against a druggist who in spite of the wife's protests sold morphine to her husband from the use of which he became mentally unbalanced. *Flandermeyer* v. *Cooper*, 98 N. E. 102 (Oh.).[8] In the other the wife was denied a recovery for loss either of support or *consortium* arising from a negligent injury to the husband. *Brown* v. *Kistleman*, 98 N. E. 631 (Ind.).

In allowing damages for an injury to the marital relation two interests are to be considered,—the individual and the social. Not only is the relationship an advantageous one for the parties, but it is the basis of our social organization. To the essentially personal element the wife con-

[1] *Consortium* is properly used in this sense. Feneff *v.* New York Central & Hudson River R. Co., 203 Mass. 278, 89 N. E. 436. Great confusion exists in the cases because it is sometimes used as including the right to services or support. Marri *v.* Stamford Street R. Co., 84 Conn. 9, 78 Atl. 582. In this note the term is limited to its narrower meaning.

[2] "Notice is taken only of the wrong of the superior; while the loss of the inferior is totally disregarded." 3 BL. COMM. 143. See COOLEY, TORTS, 3 ed., 472.

[3] The husband was allowed to recover in Winsmore *v.* Greenbank, Willes, 577 (alienation of affections); Brown *v.* Spaulding, 63 N. H. 622, 4 Atl. 394 (criminal conversation); Smith *v.* City of St. Joseph, 55 Mo. 456 (negligence resulting in personal injuries); Mowry *v.* Clancy, 43 Ia. 609 (malpractice by a doctor); Rogers *v.* Smith, 17 Ind. 323 (malicious prosecution); Hoard *v.* Peck, 56 Barb. (N. Y.) 202, Holleman *v.* Harward, 119 N. C. 150, 25 S. E. 972 (sale of injurious drugs); Garrison *v.* Sun Printing and Publishing Association, 150 N. Y. App. Div. 689 (slander and libel).

[4] The Ohio statutes are typical. "A married woman shall sue and be sued as if she were unmarried." OHIO, REV. STAT., 1906, § 4996. "A married person may take, hold or dispose of property, real or personal, the same as if unmarried." OHIO, REV. STAT., 1906, § 3114.

[5] Bennett *v.* Bennett, 116 N. Y. 584, 23 N. E. 17; Gernerd *v.* Gernerd, 185 Pa. St. 233, 39 Atl. 884; Wolf *v.* Frank, 92 Md. 138, 48 Atl. 132. *Contra*, Duffies *v.* Duffies, 76 Wis. 374, 45 N. W. 522; Lonstorf *v.* Lonstorf, 118 Wis. 159, 95 N. W. 961; Lellis *v.* Lambert, 24 Ont. App. 653. New Jersey was considered until recently to be one of the states denying the wife's right of recovery. Hodge *v.* Wetzler, 69 N. J. L. 490, 55 Atl. 49. But it is now in accord with the weight of authority. Sims *v.* Sims, 79 N. J. L. 577, 76 Atl. 1063.

[6] Seaver *v.* Adams, 66 N. H. 142, 19 Atl. 776; Haynes *v.* Nowlin, 129 Ind. 581, 29 N. E. 389; Nolin *v.* Pearson, 191 Mass. 283, 77 N. E. 890. *Contra*, Kroessin *v.* Keller, 60 Minn. 372, 62 N. W. 438; Doe *v.* Roe, 82 Me. 503, 20 Atl. 83. If the action is based on the suspicion thereby cast on the issue the Minnesota case is sound. It is submitted that this is not the proper theory. One case has held that the wife may recover although the husband was the seducer. Hart *v.* Knapp, 76 Conn. 135, 55 Atl. 1021.

[7] See COOLEY, TORTS, 3 ed., 506–547.

[8] There was no allegation of loss of support.

tributes in equal manner and degree with the husband. Therefore on principle her right in the relationship should be as valuable to her as property, as is the husband's right to him. Before the Ohio case the law had developed no further than to allow the wife an action in the two direct offenses against the marital relation in which the interest of society in general as well as the individual interest is most strikingly present,— alienation of affections and criminal conversation.[9] It is submitted that the action should lie wherever as in the Ohio case a wrongful and intentional interference with the relationship by a third party deprives the husband or wife of the *consortium* of the other; and that this is a common-law right.[10]

Where the loss of *consortium* results solely from a negligent injury the principle is less obvious. The interest of society in protecting the sanctity of the institution is not concerned. The Indiana case accords with the little authority on this subject in denying a recovery on the ground of double damages, since the husband will recover in his action for his physical injuries.[11] In Massachusetts and Connecticut the courts are even showing a tendency to deny the right of the husband to recover for loss of *consortium* resulting from negligent injury to the wife, in view of the modern legislation allowing her to recover for her own injuries.[12] But if our conclusion that the personal interest in the marital relationship is a distinct property right is correct, it is clear that damages to the one are not compensation for the injury to the other. It is submitted that the practical difficulties with which the jury system sometimes confronts the administration of justice are not in this case sufficient to overcome the desirability of protecting the right.

PREFERRED STOCKHOLDER'S RIGHT OF PREËMPTION. — When a corporation increases its capital stock, the existing stockholders have a right in most states to subscribe for the new issue in proportion to their holdings before it can be otherwise disposed of.[1] The rule is based on the principle that each stockholder is entitled to an opportunity to preserve his proportionate share in the control of the corporation and in the capital, surplus, and other assets of the enterprise.[2] Moreover, it has a practical

[9] This branch of the law is of very recent growth. The leading case was decided in 1889. Foot *v.* Card, 58 Conn. 1, 18 Atl. 1027. But the subject was discussed in 1861. Lynch *v.* Knight, 9 H. L. C. 577.

[10] Haynes *v.* Nowlin, *supra*; Foot *v.* Card, *supra*; Bennett *v.* Bennett, *supra*.

[11] Feneff *v.* New York Central & Hudson River R. Co., *supra*; Goldman *v.* Cohen, 30 N. Y. Misc. 336, 63 N. Y. S. 459; Glenn *v.* Western Union Tel. Co., 1 Ga. App. 821.

[12] Bolger *v.* Boston Elevated Ry. Co., 205 Mass. 420, 91 N. E. 389; Feneff *v.* New York Central & Hudson River R. Co., *supra*; Marri *v.* Stamford Street R. Co., *supra*. The court says that the right of *consortium* is too vague and indefinite a right. The same argument would apply to the other cases in which an action for its loss is allowed. The fear of excessive jury verdicts is probably the underlying reason for the decisions. For a discussion of this subject see 10 COL. L. REV. 678, and 24 HARV. L. REV. 501.

[1] Gray *v.* President, etc. of Portland Bank, 3 Mass. 363; Electric Co. of America *v.* Edison Electric Illuminating Co., 200 Pa. St. 516, 50 Atl. 164. See 4 THOMPSON, CORPORATIONS, § 3642; TAYLOR, CORPORATIONS, 5 ed., § 569.

[2] See Dousman *v.* Wisconsin, etc. Co., 40 Wis. 418, 421; Jones *v.* Morrison, 31 Minn. 140, 153, 16 N. W. 854, 861.